

These are the tentative rulings for civil law and motion matters set for Tuesday, July 22, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 21, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0026283 Pacific Credit Exchange vs. Knowland, Melissa

Appearance required on July 22, 2014 at 8:30 a.m. in Department 40.

2. M-CV-0059947 Capital One Bank USA, N.A. vs. Lopez, Sylvia A.

Plaintiff Capital One Bank, N.A.'s unopposed motion for summary judgment is granted.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c). The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. *Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468. Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to establish disputed material facts. Code Civ. Proc. § 437c(p)(1).

Plaintiff submits evidence to establish that defendant Sylvia A. Lopez applied for and obtained a credit card from plaintiff, incurred charges thereon, and subsequently defaulted by failing to pay amounts due. (Pltf. SSUMF 1-10.) Plaintiff submits evidence to support its damages in the amount of \$3,618.32, and a memorandum of costs attesting to costs in the amount of \$800. (Pltf. SSUMF 11.) As plaintiff has established a prima facie case, the burden of proof shifts to the defendant to show the existence of disputed material facts. As defendant has filed no opposition to the motion, defendant fails to satisfy her burden. Accordingly,

plaintiff is entitled to judgment as a matter of law, in the principal amount of \$3,618.32, plus costs in the amount of \$800.

3. M-CV-0061151 Discover Bank vs. Sheldon, Jason

Plaintiff's request for judicial notice is granted.

Defendant's demurrer to complaint is overruled. The complaint adequately sets forth a valid cause of action for breach of written agreement. The complaint does not disclose on its face that the statute of limitations wholly bars plaintiff's claim. The statute of limitations begins to run on a cause of action for recovery of unpaid installments at the time each installment becomes due. *White v. Moriarty* (1993) 15 Cal.App.4th 1290, 1299.

Defendant shall file and serve his answer to the complaint by no later than August 8, 2014.

4. S-CV-0026453 Dunmore, Steven G vs. Dunmore, Sidney D., et al

The demurrers to second amended complaint and motions to strike are continued to August 19, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

5. S-CV-0030705 Cruz, Belma vs. U.S. Home Corporation

Beutler Corporation's motion for an order lifting the discovery stay is granted. The discovery stay imposed by Case Management Order No. 1. is hereby vacated.

6. S-CV-0031683 Walker, Tammy vs. Mercedes-Benz of Rocklin, et al

The motion to tax costs was dropped by the moving party.

7. S-CV-0032565 North Lakeshore, LLC vs. Turn-Key Construction Group, Inc.

Seneca Stucco, Inc.'s motion opposing Renaissance Stone Gallery, Inc.'s application for determination of good faith settlement is granted.

Where non-settling defendants contest good faith, the party moving for determination of a good faith settlement must make a sufficient showing of all of the factors under *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.* (1985) 38 Cal.3d 488. *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1262. In such cases, conclusory allegations as to the settling parties' liability are insufficient. *Greshko v. County of Los Angeles* (1987) 194 Cal.App.3d 822, 834. Substantial evidence (i.e., factual declarations) showing the nature and extent of the settling defendant's liability is required. *Mattco Forge, Inc. v. Arthur Young & Co.* (1995) 38 Cal.App.4th 1337, 1348.

Renaissance Stone Gallery, Inc. ("Renaissance") submits nothing but the conclusory statements of counsel regarding the nature and extent of its liability. Renaissance also submits

the declaration of a contractor who opines that plaintiff's costs for repairs is marked up by 70%. However, this declaration lacks sufficient foundation to enable the court to accept the statements made therein as substantial competent evidence. Based on this showing, the court is unable to determine whether the proposed settlement is within the ballpark of a rough approximation of plaintiff's total recovery and the settling party's proportionate liability.

8. S-CV-0032713 Jiosi, Dawn vs. O'Brien, Bridget, et al

The motion by Susan L. Holland to be relieved as plaintiff's counsel is continued, on the court's own motion, to August 14, 2014, at 8:30 a.m., in Department 40.

This action was commenced on March 15, 2013. In advance of the July 9, 2013 Case Management Conference, on June 27, 2013 plaintiff's counsel made an ex parte application for an extension of time in which to serve the summons and complaint. The application was denied per order of even date by the Hon. Alan V. Pineschi, Presiding Judge.

On August 20, 2013, plaintiff's counsel made another ex parte application for an extension of time for service. The application was denied per the order of Judge Pineschi of the same date.

At the Case Management Conference of September 3, 2013, the matter was still not at issue. The court, per the Hon. Michael A. Jacques, Commissioner, ordered that the case be brought at issue, advised that the court would consider the imposition of sanctions if the matter was not at issue by the time of the next CMC, and continued the CMC to December 3, 2013.

At the CMC of December 3, 2013 the matter was still not at issue. Commissioner Jacques imposed sanctions of \$200 upon plaintiff's counsel, but stayed the order until the continued CMC date of February 11, 2014, stating that the sanctions would be vacated if the matter was at issue. The court reiterated its order that the summons and complaint be served.

At the CMC of February 11, 2014, the matter was not at issue. The court vacated the stay and imposed the sanctions previously ordered. The court continued the CMC to May 20, 2014, and reiterated its order that the summons and complaint be served, and the matter be brought at issue before that date.

At the continued CMC of May 20, 2014, the matter was still not at issue. The court set an Order to Show Cause re: Dismissal for failure to comply with case management, with a hearing date of September 2, 2014. The file contains no proof of service of the summons and complaint. The instant papers contain no recitation that there was any attempt to comply with the court's orders that the summons and complaint be served forthwith, either in the thirty-seven (37) days between the last CMC and when the instant papers were filed, or to date.

Now plaintiff's counsel moves to withdraw.

The moving papers, and service of the motion are not in order. Local Rule 20.2.3 requires that the Notice of Motion contain an advisement of the court's tentative ruling

procedures. These papers lack that advisement. The moving papers do not contain a recitation that Attorney Brett Halpren agreed to accept service of the motion on behalf of the plaintiff. Attorney Halpren has not appeared in this action, nor does the website of the State Bar of California indicate that he is authorized to practice law in this state. Effective service, therefore, needed to be accomplished upon the plaintiff. CCP Sec. 1010.

The court on its own motion strikes the three proofs of service, each filed June 26, 2014, because they are unsigned. The remaining proof of service was filed on June 30, 2014.

The court shortens time for service of the moving papers and amended notice of hearing by two days, such that service of the same upon the plaintiff by Express Mail no later than July 25, 2014 shall be sufficient. The Amended Notice of Hearing will contain the recitation required by Local Rule 20.2.3. If this tentative ruling is adopted, the minutes will constitute the order of the court. If adopted, a copy of this tentative ruling is to be served on plaintiff as well.

The request to continue the September 2, 2014 hearing is denied.

9. S-CV-0032787 Myers, Michael, et al vs. Burgess, Holly S., et al

The motion of Tory M. Pankopf to be relieved as counsel for defendant and cross-complainant Secured Document Research is granted, effective upon the filing of proof of service of the signed order on Secured Document Research and all parties who have appeared in the case. Cal. R. Ct., rule 3.1362(e).

If oral argument is requested, Mr. Pankopf's request for telephonic appearance is granted. All telephonic appearances are governed by Local Rule 20.8.

10. S-CV-0033369 Mullican, John, et al vs. Ford Motor Company

The motion to set aside default is dropped as moot. An order setting aside the default of Ford Motor Company per stipulation of the parties was filed on June 26, 2014. Defendant Ford Motor Company shall file and serve its answer to the complaint by August 1, 2014.

11. S-CV-0033456 Kokila, Katri vs. Gonzales, Francisca et al

Defendant Francisca Gonzalez's motion to set aside entry of default is denied without prejudice. There is no proof of service in the court's file establishing that the motion was served on all parties who have appeared in this action.

12. S-CV-0034010 Beadle, Marva vs. Allied Trustee Services, et al

The demurrers to the complaint are continued to August 19, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

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